

These are the tentative rulings for civil law and motion matters set for Thursday, November 21, 2013, at 8:30 a.m. in the Placer County Superior Court. The tentative ruling will be the court's final ruling unless notice of appearance and request for oral argument are given to all parties and the court by 4:00 p.m. today, Wednesday, November 20, 2013. Notice of request for oral argument to the court must be made by calling (916) 408-6481. Requests for oral argument made by any other method will not be accepted. Prevailing parties are required to submit orders after hearing to the court within 10 court days of the scheduled hearing date, and after approval as to form by opposing counsel. Court reporters are not provided by the court. Parties may provide a court reporter at their own expense.

EXCEPT AS OTHERWISE NOTED, THESE TENTATIVE RULINGS ARE ISSUED BY COMMISSIONER MICHAEL A. JACQUES AND IF ORAL ARGUMENT IS REQUESTED, ORAL ARGUMENT WILL BE HEARD IN DEPARTMENT 40, LOCATED AT 10820 JUSTICE CENTER DRIVE, ROSEVILLE, CALIFORNIA.

1. M-CV-0054480 A-L Financial Corporation vs. McCartney, Heather M., et al

Cross-defendants' unopposed motion for sanctions against defendant/cross-complainant Heather McCartney is granted. The moving cross-defendants are dismissed from the cross-complaint. Cross-defendants are awarded \$1,667.50 in sanctions.

2. M-CV-0056598 Midland Funding LLC vs. Gibson, Brian

Plaintiff's unopposed Motion for Terminating Sanctions is granted. Defendant's answer, filed on December 19, 2012, is stricken. The January 17, 2014 short cause trial date is vacated.

3. S-CV-0028082 Burns, Richard A., et al vs. Woodside Lincoln Oaks, Inc.

Defendants Woodside Lincoln Oaks, Inc. and Woodside Homes of California, Inc.'s Motion to Determine Good Faith of Settlement is granted. Based on the standards set forth in *Tech-Bilt v. Woodward Clyde & Associates* (1985) 38 Cal.3d 488, the settlement at issue is within the reasonable range of the settling tortfeasors' proportionate shares of liability for plaintiffs' injuries and therefore is in good faith within the meaning of CCP§877.6.

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4. S-CV-0028824 Carrera, Richard, et al vs. Polito, Dennis

Plaintiffs' Motion to Tax Costs is granted in part. Defendant Chartis concedes that \$120.00 in motion fees should be taxed. Based upon this, the court taxes the cost memo as to this amount. The remainder of the costs are reasonable and the motion is denied as to these costs. Defendant Chartis' Memorandum of Costs, filed on October 30, 2013, is reduced by \$120.00.

5. S-CV-0029602 Tracy, Lawrence R. vs. Aleph International Corporation, et al

This tentative ruling is issued by the Honorable Charles D. Wachob. If oral argument is requested, such argument shall be heard at 8:30 a.m. in Department 42:

Defendant Aleph International Corporation's (AIC's) Motion to Quash Plaintiff's Attempted Service of Summons Upon Inet Consulting Co., Ltd. (Inet) Through AIC

Defendant AIC moves to quash service of summons not upon itself, but upon another named defendant, Inet.

Plaintiff's proof of service declares service of the summons, complaint, and other associated documents was made by substituted service through its alleged general manager, AIC. The summons, complaint, and other associated documents were left with "Monique Albalalos" in "Admin" for AIC's alleged agent for service, Daniel Fingerman.

The statute governing motions to quash, Code of Civil Procedure section 418.10, makes clear that it is the defendant who is subject to the service of process that may bring a motion to quash. Code of Civil Procedure Section 418.10(a)(1) provides that "[a] defendant, on or before the last day of his or her time to plead..., may serve and file a notice of motion... [¶] [t]o quash service of summons on the ground of lack of jurisdiction of the court *over him or her.*" [Emphasis added.] A further reading of the section supports that the proper party to bring the motion is the defendant actually subject to service of process. The section grants rights to the *defendant subject to the service*, including that "[t]he service and filing of the notice [of motion to quash] shall extend the defendant's time to plead until 15 days after service upon him or her of a written notice of entry of an order denying his or her motion" (*Code of Civil Procedure section 418.10(b).*); "[i]f the motion is denied by the trial court, the defendant, within 10 days after service upon him or her of a written notice of entry of an order of the court denying his or her motion, ..., may petition an appropriate reviewing court for a writ of mandate ... The defendant shall file or enter his or her responsive pleading in the trial court ... unless, ..., he or she serves upon the adverse party and files with the trial court a notice that he or she has petitioned for a writ of mandate" (*Code of Civil Procedure section 418.10(c)*) and that "[n]o default may be entered against the defendant before expiration of his or her time to plead, and no motion under this section, ... shall be deemed a general

appearance by the defendant” (*Code of Civil Procedure section 418.10(d)*).

When read in its entirety, including the above rights granted to the defendant who is asserting the “lack of jurisdiction of the court *over him or her*,” it is clear that the plain language and intent of Code of Civil Procedure section 418.10 is that the defendant who has been served is the party who is authorized to move the court to quash service. The statute does not provide that a third party may bring a motion to quash service of summons made upon another defendant.

Accordingly, pursuant to Code of Civil Procedure section 418.10, it is Inet - and not AIC - who has standing to bring a motion to quash service of the summons upon Inet. Defendant AIC’s attempt to quash service of summons upon Inet must be denied. This conclusion is made simpler here by the fact that AIC has gone to some length to specifically deny any association with Inet and to disclaim any ability to accept service on Inet’s behalf. (Fingerman declaration ¶2; Lopez declaration.) As AIC has no authority to speak on behalf of Inet, and because it otherwise lacks standing to assert lack of jurisdiction as to Inet, AIC’s motion is denied.

Defendants’ Aleph America Corporation (AAC) and AIC’s Motion to Compel Plaintiff to Provide Further Responses to Special Interrogatories

Defendants’ motion is granted in part. The current motion addresses both AIC’s and AAC’s special interrogatories propounded upon plaintiff. Each set consists of 188 special interrogatories. There is no dispute between the parties that both sets were supported by declarations under Code of Civil Procedure section 2030.050.

AIC’s Special Interrogatories

As to plaintiff’s boilerplate objection to nos. 1-29, 40-44, 54-56, 62, 64, 66-69, 71-73, 75-82, 84-86, 88, 90-98, 100-101, 103-119, 122-188, plaintiff has not brought a motion for protective order to challenge the number of special interrogatories propounded by AIC. The objection that the special interrogatories exceed the scope of Code of Civil Procedure section 2030.030(a)(1) is not the equivalent of a protective order. (*Columbia Broadcasting System, Inc. v. Superior Court for Los Angeles County (1968) 263 Cal.App.2d 12, 23.*) There has been an insufficient showing that the propounded interrogatories are unduly burdensome or oppressive. AIC has also made a minimal showing of attempts to meet and confer prior to bringing the motion. Based upon the foregoing, AIC’s motion is granted as to the aforementioned special interrogatories. Plaintiff shall provide verified responses, without objections, on or before December 6, 2013.

As to plaintiff’s responses to nos. 33, 36-39, 48-51, 89, 102, and 121, the responses are inadequate to sufficiently respond to the propounded interrogatories. AIC has made a minimal showing of attempts to meet and confer prior to bringing

the motion. Based upon the foregoing, AIC's motion is granted as to the aforementioned special interrogatories. Plaintiff shall provide verified responses, without objections, on or before December 6, 2013.

As to plaintiff's responses to nos. 31, 35, 45, 52, 57, 59, and 99, the responses are inadequate and do not sufficiently identify the items sought in the interrogatories. AIC has made a minimal showing of attempts to meet and confer prior to bringing the motion. Based upon the foregoing, AIC's motion is granted as to the aforementioned special interrogatories. Plaintiff shall provide verified responses, without objections, on or before December 6, 2013.

As to plaintiff's responses to nos. 32, 34, 46, 53, 58, 60, 61, 63, and 83, the responses are adequate and do not require further responses. Plaintiff stated that a follow up disc was provided to AIC that corresponded to the control numbers referenced in the responses. (Noble declaration ¶4.) Thus, AIC's motion is denied as to these special interrogatories.

As to plaintiff's responses to nos. 47, 65, 70, 74, 87, and 120, AIC has failed to comply with California Rules of Court, Rule 3.1345. Since these interrogatories fail to include plaintiff's response and AIC's reasoning for a further response, the court cannot determine the merits of AIC's contentions. Based upon this, AIC's motion is denied as to these special interrogatories.

The final issue is whether either party should be awarded sanctions. The court finds that both parties could have avoided the necessity of this motion if they had engaged in further informal meet and confer. The assertions on both sides were brought with substantial justification. Thus, the court declines to award sanctions to either party.

AAC's Special Interrogatories

As to plaintiff's boilerplate objection to nos. 1-29, 40-44, 54-56, 62, 64, 66-69, 71-73, 75-82, 84-86, 88, 90-98, 100-101, 103-119, 122-188, plaintiff has not brought a motion for protective order to challenge the number of special interrogatories propounded by AAC. The objection that the special interrogatories exceeding the scope of Code of Civil Procedure section 2030.030(a)(1) is not the equivalent of a protective order. (*Columbia Broadcasting System, Inc. v. Superior Court for Los Angeles County* (1968) 263 Cal.App.2d 12, 23.) There has been an insufficient showing that the propounded interrogatories are unduly burdensome or oppressive. AAC has also made a minimal showing of attempts to meet and confer prior to bringing the motion. Based upon the foregoing, AAC's motion is granted as to the aforementioned special interrogatories. Plaintiff shall provide verified responses, without objections, on or before December 6, 2013.

As to plaintiff's responses to nos. 33, 36-39, 48-51, 89, 102, and 121, the responses are inadequate to sufficiently respond to the propounded interrogatories.

AAC has made a minimal showing of attempts to meet and confer prior to bringing the motion. Based upon the foregoing, AAC's motion is granted as to the aforementioned special interrogatories. Plaintiff shall provide verified responses, without objections, on or before December 6, 2013.

As to plaintiff's responses to nos. 31, 35, 45, 52, 57, 59, and 99, the responses are inadequate and do not sufficiently identify the items sought in the interrogatories. AAC has made a minimal showing of attempts to meet and confer prior to bringing the motion. Based upon the foregoing, AAC's motion is granted as to the aforementioned special interrogatories. Plaintiff shall provide verified responses, without objections, on or before December 6, 2013.

As to plaintiff's responses to nos. 32, 34, 46, 53, 58, 60, 61, 63, and 83, the responses are adequate and do not require further responses. Plaintiff stated that a follow up disc was provided to AAC that corresponded to the control numbers referenced in the responses. (Noble declaration ¶4.) Thus, AAC's motion is denied as to these special interrogatories.

As to plaintiff's responses to nos. 47, 65, 70, 74, 87, and 120, AIC has failed to comply with California Rules of Court, Rule 3.1345. Since these interrogatories fail to include plaintiff's response and AIC's reasoning for a further response, the court cannot determine the merits of AIC's contentions. Based upon this, AAC's motion is denied as to these special interrogatories.

The final issue is whether either party should be awarded sanctions. The court finds that both parties could have avoided the necessity of this motion if they had engaged in further informal meet and confer with each other. The assertions on both sides, nonetheless, were brought with substantial justification. Thus, the court declines to award sanctions to either party.

6. S-CV-0029922 Villages of the Galleria Home. Ass'n vs. Haverhill Comm.

The motion for service of cross-complaint is dropped from the calendar as no moving papers were filed with the court.

7. S-CV-0030126 Cappawana, George, et al vs. Centex Real Estate Corp., et al

Cross-Defendant Custom Masonry by Curt Neice's Motion to Determine Good Faith of Settlement is granted. Based on the standards set forth in *Tech-Bilt v. Woodward Clyde & Associates* (1985) 38 Cal.3d 488, the settlement at issue is within the reasonable range of the settling tortfeasor's proportionate shares of liability for plaintiffs' injuries and therefore is in good faith within the meaning of CCP§877.6.

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8. S-CV-0030256 Estate of George M. Mason, et al vs. Lincoln Manor, et al

Plaintiffs' Motion to Set-Aside Court Dismissal is granted. The dismissal, entered on November 13, 2012, is vacated. The matter is set for a Case Management Conference on January 29, 2014 at 10:00 a.m. in Department 40. The matter is to be fully at issue or further sanctions will be imposed.

9. S-CV-0030728 Kwan, Tim, et al vs. Lafler, Moore, Connerty, Webb, et al

The appearance of the parties is required on plaintiffs' Motion to Continue Trial.

10. S-CV-0031148 Mazzoni, Nello, et al vs. Centex Real Estate Corp., et al

The appearance of the parties is required on Cross-Defendant St. Paul Fire and Marine Insurance Company's (St. Paul) Motion for Summary Adjudication and Cross-Complainant Centex's Motion for Summary Adjudication

Cross-Defendant Custom Masonry by Curt Neice's (Neice) Motion to Determine Good Faith of Settlement

Neice's motion is granted. Based on the standards set forth in *Tech-Bilt v. Woodward Clyde & Associates* (1985) 38 Cal.3d 488, the settlement at issue is within the reasonable range of the settling tortfeasor's proportionate shares of liability for plaintiffs' injuries and therefore is in good faith within the meaning of CCP§877.6.

11. S-CV-0031218 Seibel, Elsie vs. Siena Care Center, LLC

The Petition to Approve Compromise of Disabled Person's Claim is granted. If oral argument is requested, the appearance of Constance Burns at the hearing is waived.

12. S-CV-0031384 American Health Care vs. Beechtree Partners

Defendant's Demurrer is sustained with leave to amend. A party may demur to a complaint where the pleading does not state facts sufficient to constitute a cause of action. (CCP§430.10(e).) A demurrer tests the legal sufficiency of the pleadings, not the truth of the plaintiff's allegations or accuracy of the described conduct. (*Bader v. Anderson* (2009) 179 Cal.App.4th 775, 787.) As such, the allegations in the pleadings are deemed to be true no matter how improbable the allegations may seem. (*Del E. Webb Corp. v. Structural Materials Co.* (1981) 123 Cal.App.3d 593, 604.) Defendant challenges the second cause of action for fraudulent misrepresentation and third cause of action for negligent misrepresentation.

A fraud action requires a plaintiff prove: "(1) the defendant represented to the plaintiff that an important fact was true; (2) that representation was false; (3) the defendant knew that the representation was false when the defendant made it, or the defendant made the representation recklessly and without regard for its truth; (4) the

defendant intended that the plaintiff rely on the representation; (5) the plaintiff reasonably relied on the representation; (6) the plaintiff was harmed; and, (7) the plaintiff's reliance on the defendant's representation was a substantial factor in causing that harm to the plaintiff. Each element in a cause of action for fraud must be factually and specifically alleged.” (*Perlas v. GMAC Mortg., LLC* (2010) 187 Cal.App.4th 429, 434.) The factual allegations in the second cause of action fail to state the level of specificity necessary for a fraud action.

“ ‘The elements of negligent misrepresentation are (1) the misrepresentation of a past or existing material fact, (2) without reasonable ground for believing it to be true, (3) with intent to induce another's reliance on the fact misrepresented, (4) justifiable reliance on the misrepresentation, and (5) resulting damage.’ [Citations omitted.] While there is some conflict in the case law discussing the precise degree of particularity required in the pleading of a claim for negligent misrepresentation, there is a consensus that the causal elements, particularly the allegations of reliance, must be specifically pleaded. [Citations omitted.]” (*National Union Fire Ins. Co. of Pittsburgh, PA v. Cambridge Integrated Services Group, Inc.* (2009) 171 Cal.App.4th 35, 50.) As seen with the previous cause of action, the third cause of action is not pled with necessary level of specificity.

The second amended complaint shall be filed and served on or before December 6, 2013.

13. S-CV-0031470 Abrigo, Ulysses, et al vs. JTS Communities, Inc.

Cross-Defendant Sacramento A-1 Door's Motion to Determine Good Faith of Settlement is granted. Based on the standards set forth in *Tech-Bilt v. Woodward Clyde & Associates* (1985) 38 Cal.3d 488, the settlement at issue is within the reasonable range of the settling tortfeasor's proportionate shares of liability for plaintiffs' injuries and therefore is in good faith within the meaning of CCP§877.6.

Counsel's request for telephonic appearance is granted. The party is informed that it must make arrangements for the telephonic appearance through CourtCall pursuant to Local Rule 20.8.A.2.

14. S-CV-0032113 Rose, Stephen, et al vs. Lennar Renaissance, Inc.

Plaintiff's unopposed Motion to Consolidate is granted. Rose, et al. v. Lennar Renaissance, Inc., et al, SCV-32113 is consolidated with Campos, et al. v. Lennar Renaissance, Inc., et al., SCV-32660. Rose v. Lennar, SCV-32113 shall be the lead case and all future filings will use this case number.

Counsel's request for telephonic appearance is granted. The party is informed that it must make arrangements for the telephonic appearance through CourtCall pursuant to Local Rule 20.8.A.2.

15. S-CV-0032246 Wexford Homeowners Ass'n vs. Dixon, Francis S., et al

The two motions to compel discovery are dropped from the calendar as no moving papers were filed with the court.

16. S-CV-0032610 Pecson, Zenaida vs. JPMorgan Chase Bank, NA. et al

This tentative ruling is issued by the Honorable Michael W. Jones. If oral argument is requested, it shall be heard at 8:30 a.m. in Department 43:

Plaintiff's Motion for Reconsideration is denied. A motion for reconsideration must be made within 10 days after service of written notice of entry of the order and must be based upon "new or different facts, circumstances, or law". (Code of Civil Procedure section 1008(a).) There is no dispute that the motion is timely brought as plaintiff was served with the notice of entry of order on September 26, 2013 and she filed her motion on October 4, 2013. The remaining issue is whether plaintiff has demonstrated new or different facts, circumstances, or law to warrant reconsideration of the court's September 26, 2013 ruling. Such a finding cannot be made in this case. Plaintiff asserts that the failure of defendants to appear at oral argument is the basis for this court to reconsider the prior ruling on the demurrer. However, the failure of the parties to request or appear for oral argument is not a "new" or "different" fact or circumstance to warrant reconsideration under Code of Civil Procedure section 1008. This is collateral to the merits of the demurrer. (*Gilberd v. AC Transit* (1995) 32 Cal.App.4th 1494, 1500.) As plaintiff has not presented any other facts or circumstances beyond her contentions regarding defendants' failure to appear for oral argument, she has failed to show any new or different facts, circumstances, or law to warrant reconsideration of the September 26, 2013 ruling on the demurrer. Based upon the foregoing, the motion is denied.

17. S-CV-0032642 Dumont, Anna, et al vs. Daisy Holdings, LLC

Plaintiffs' unopposed Motion to Amend Complaint is granted. The court has broad discretion in granting leave to amend a pleading and such discretion is usually exercised liberally to permit amendment to the pleading. (*Howard v. County of San Diego* (2010) 184 Cal.App.4th 1422, 1428.) Plaintiffs' motion has been brought in a timely fashion, comports to the requirement of CRC Rule 3.1324, and there is no showing of prejudice to the Defendant. However, Ms. Dumont will be joined as a defendant pursuant to CCP§382.

Plaintiffs shall file their amended complaint on or before December 2, 2013.

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18. S-CV-0032660 Campos, Jamie, et al vs. Lennar Renaissance, Inc.

Plaintiff's unopposed Motion to Consolidate is granted. Rose, et al. v. Lennar Renaissance, Inc., et al, SCV-32113 is consolidated with Campos, et al. v. Lennar Renaissance, Inc., et al., SCV-32660. Rose v. Lennar, SCV-32113 shall be the lead case and all future filings will use this case number.

Counsel's request for telephonic appearance is granted. The party is informed that it must make arrangements for the telephonic appearance through CourtCall pursuant to Local Rule 20.8.A.2.

19. S-CV-0032760 Metz, Richard vs. Farmer's Insurance Co.

Defendant's Motion for Summary Judgment is continued, on the court's own motion, to December 19, 2013 at 8:30 a.m. in Department 42 to be heard by the Honorable Charles D. Wachob.

20. S-CV-0033002 Scott, Harold, et al vs. Ford Motor Company

Defendant's Demurrer to the Second Amended Complaint (SAC)

Ruling on Request for Judicial Notice

Defendant's request is granted as to Exhibit A. The request is denied as to Exhibits B through F.

Ruling on Demurrer

A party may demur to a complaint where the pleading does not state facts sufficient to constitute a cause of action. (CCP§430.10(e).) A demurrer tests the legal sufficiency of the pleadings, not the truth of the plaintiff's allegations or accuracy of the described conduct. (*Bader v. Anderson* (2009) 179 Cal.App.4th 775, 787.) As such, the allegations in the pleadings are deemed to be true no matter how improbable the allegations may seem. (*Del E. Webb Corp. v. Structural Materials Co.* (1981) 123 Cal.App.3d 593, 604.) "A demurrer based on a statute of limitations is appropriate if the ground appears on the face of the complaint or from matters of which the court may or must take judicial notice." (*Aaronoff v. Martinez-Seftner* (2006) 136 Cal.App.4th 910, 918.)

This is the third incarnation of plaintiff's operative pleading yet, as pled, the causes of action still appear to be barred by the statute of limitations. The plaintiff alleges that he purchased the 2006 Ford F-250 on August 10, 2005. (SAC ¶7.) However, the original complaint was filed on May 13, 2013, more than 8 years later. While the SAC goes to great lengths to plead various factual allegations supporting delayed discovery and tolling of the statute of limitations, the SAC is still deficient. A plaintiff that relies upon the delayed discovery rule must plead the specific facts showing (1) the

time and manner of discovery and (2) the inability to have made earlier discovery despite reasonable diligence. (*Fox v. Ethicon Endo-Surgery, Inc.* (2005) 35 Cal.4th 797, 808.) There are insufficient facts in the SAC to sufficiently plead delayed discovery. Plaintiff alleges that after approximately 9,000 miles he began experiencing problems. (SAC ¶22.) There is no timeline established for when these problems began. Plaintiff then goes on to allege, in conclusory fashion, that he did not learn of the engine repair problems until his last repair attempt on August 13, 2010. (SAC ¶44.) These allegations do not sufficiently allege the time and manner of discovery or plaintiff's inability to have made the discovery earlier. Based upon the foregoing, the demurrer is sustained as to the first, second, third, fourth, and fifth cause of action. Although plaintiff has already had three opportunities to correctly plead the statute of limitations, the demurrer is sustained with leave to amend.

The third amended complaint shall be filed and served on or before December 6, 2013.

Defendant's Motion to Strike

In light of the court's ruling on the demurrer, the motion to strike is dropped as moot.

Counsel's request for telephonic appearance is granted. Counsel is informed that he must make arrangements for the telephonic appearance through CourtCall pursuant to Local Rule 20.8.A.2.

21. S-CV-0033404 Community 1st Bank vs. North State Specialty Contracting

Plaintiff's applications for right to attach order and writ of attachment as to defendants Barbara Weaver and Gareth Weaver are granted subject to a \$20,000 total undertaking, \$10,000 applicable as to each defendant.

22. S-CV-0033412 Davidson, Nicholas P. vs. California Housing Finance Agency

Defendant's Demurrer is dropped from the calendar. Plaintiff filed a voluntary dismissal of the entire action on November 13, 2013.

23. S-CV-0033516 Samaan, Makram Dr. vs. Lake Orta Corporation, et al

Defendant Capital City Escrow's (CCE) Demurrer is sustained with leave to amend. A party may demur to a complaint where the pleading does not state facts sufficient to constitute a cause of action. (CCP§430.10(e).) A demurrer tests the legal sufficiency of the pleadings, not the truth of the plaintiff's allegations or accuracy of the described conduct. (*Bader v. Anderson* (2009) 179 Cal.App.4th 775, 787.) As such, the allegations in the pleadings are deemed to be true no matter how improbable the allegations may seem. (*Del E. Webb Corp. v. Structural Materials Co.* (1981) 123 Cal.App.3d 593, 604.) CCE challenges the sixth cause of action for breach of contract

and seventh cause of action for breach of fiduciary duty based, primarily, upon discrepancies between the allegations pled in the complaint and provisions within the attached purchase agreements. “The courts ... will not close their eyes to situations where a complaint contains allegations of fact inconsistent with attached documents, or allegations contrary to facts which are judicially noticed.” (*Del E. Webb Corp. v. Structural Materials Co.* (1981) 123 Cal.App.3d 593, 604.) The contradiction between the allegations in the complaint and the provisions with the agreement create inconsistencies in the breach of contract and breach of fiduciary duty causes of action that cannot withstand demurrer.

The amended complaint shall be filed and served on or before December 6, 2013.

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